

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

SANTIAGO LOPEZ-MENDOZA,)

Defendant.)

4:08CR3001

MEMORANDUM AND ORDER

The defendant has objected to the failure of the presentence report to give him a 2-point reduction and related relief under the safety-valve. (Filing 125.) The government has objected to the presentence report asserting that the defendant should not receive a reduction for acceptance of responsibility because the defendant obstructed justice and, further, that the defendant should receive an enhancement for that conduct. (Filing 129.)

On February 27, 2009, I heard evidence relevant to these objections. At that time, I received into evidence certain exhibits and I heard the testimony of witnesses including the defendant, Jessica Roldan and the case agent.

At the conclusion of the hearing, I gave notice that I was seriously considering sustaining the government's objections and denying the defendant's objection. In particular, there is strong evidence to suggest that the defendant lied to law enforcement officers and to the undersigned when he gave statements about Jessica Roldan to law enforcement officers in 2008 and when he testified about her in front of me on February 27, 2009.

There are severe consequences to the defendant if I sustain the government's objections and deny the defendant's objection. That is, the defendant's custodial Guidelines range would probably jump to 151 to 188 months since he would then have a total offense level of 34 and a criminal history category of I.

Counsel for the defendant requested an opportunity to more fully brief and argue the matter. Counsel shall have that opportunity.

IT IS ORDERED that:

1. The Clerk shall order a transcript of the evidentiary hearing held on February 27, 2009 and provide the undersigned and counsel of record with a copy of that transcript. The copies shall be provided no later than April 1, 2009. The original shall be filed.
2. Each side may submit initial briefs regarding any issue they care to brief and such initial briefs shall be filed no later than the close of business on April 13, 2009. Reply briefs may be submitted by either party no later than the close of business on April 20, 2009. All briefs shall be filed.
3. Sentencing is scheduled for one hour on April 29, 2009, commencing at 12:00 noon. At that time, each lawyer will be given a total of 15 minutes to make their arguments. After that, the court will proceed to rule on the objections and impose a sentence.

DATED this 2nd day of March, 2009.

BY THE COURT:
s/Richard G. Kopf
United States District Judge